

Monday, May 4, 2009

Travelhost has been beaten in Court before...Badly

This is a follow-up to my May 3rd post as it relates to the Barton case where Travelhost was sued in 2005. The outcome disappeared, but I seem to have some new friends. An anonymous writer sent me this press release. (below)

I specifically disclaim any representation that this is in fact accurate. However, I spoke with Theodore Anderson, the managing partner of the law firm, who confirmed that a jury did make a substantial award against Travelhost in 2006. He also did not deny the sum of \$588,000. He said it's a matter of public record. He also said that they later settled the case and can't say anymore....sounds like a typical TH arrangement to me.

"DALLAS, TX – April 12, 2006 – The Dallas County District Court for the 101st Judicial District a judgment for an award of \$588,000 plus court costs in damages for fraud, fraudulent inducement, and negligent misrepresentation in favor of John E. Barton and J. Barton Associates, Inc. against Dallas based TravelHost, Inc, whose Founder and Chairman, James E. Buerger, served one term on the Dallas City Council from 1989 – 1991.

TravelHost, Inc., a 38 year old, national publishing corporation based in Dallas with over 100 markets in the United States, filed suit accusing Mr. Barton, an individual associate publisher with a long and honorable military record, and his company of breach of contract and breach of a non-compete agreement. A jury found that Mr. Barton and his company did not breach the agreement, and found in Mr. Barton's favor on the counterclaims that he had been fraudulently induced into entering into the agreement with TravelHost,

Ted Anderson, Managing Partner with Kilgore Kilgore and lead defense counsel in the case, remarks, "With the economic utility of non-compete cases a subject of much discussion in the media recently, this case sets in motion an important precedent. David has triumphed over Goliath."

Sunday 5-3 2 posts

Sunday, May 3, 2009

The Franchise Disclosure Standard: "Seller Beware"

You've all heard the refrain "buyer beware." This means that generally in commerce, a seller has no duty to actively disclose possible negatives to a buyer. If the buyer doesn't ask, tough luck for the buyer.

The common result is that a buyer is out of luck unless there is "misrepresentation" or "fraud" by the seller. (The difference between the two is that fraud is intentional and Misrep can be by mistake.. See my post of May 1...135 and growing for more insight)

Sometimes there are statutes that place a higher duty of disclosure on sellers of certain things. There are

such statutes for Securities sales, home sales and....Franchises. (AS you know by now if you've read all my (and Carol's) important posts!)

Washington State's Franchise law, which is typical, alters the buyer beware standard as follows:

RCW.19.82.170 Violations

It is unlawful for any person in connection with the offer, sale, or purchase of any franchise ... in this state directly or indirectly:

...

(2) To sell or offer to sell by means ... which includes an untrue statement of a material fact or **omits to state a material fact** necessary in order to make the statements madenot misleading.

(3) To employ any device, scheme, or artifice to defraud.

(4) **To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.**

Let's get down to brass tacks:

- Travelhost does not disclose past or present litigation. This is arguably deceitful, but if it is not a franchise it is OK...so long as no statement was made to the prospect. If it is a franchise, it's a clear violation.
- Travelhost does not name present and past franchisees in any disclosures to prospects. Common law- allowable omission. If a franchise, a violation
- Travelhost inflates the number of APs. I believe this might be actionable as fraud or misrepresentation even if no franchise is found. Furthermore, the statute of limitations may be tolled if TH actively concealed this? (See my May 1 post!)
- Travelhost omits telling you that virtually nobody has succeeded in placing their free national ads..an omission?...The poster baby of all omissions!
- Travelhost omits disclosing that virtually nobody ever places national ads collecting the huge commission. An omission? You bet!

The sales technique.

Upon reflection, the biggest deception is the TH sales technique. I must say it is a thing of beauty. I get called by a person from TH that has reviewed my resume on Monster. "You know Jeff, we were very impressed with your unique credentials, you know, we are extremely selective, but you just might have what it takes to become a Travelhost AP."

In a subsequent conversation I'm told that about 1 out of 100 "applicants" are invited to Dallas and "about

1 out of 10" of the interviewees are "offered a distributorship."

The concept sounds great so I head to Dallas on my own nickel for an "interview" for a perfect sounding endeavor. Pre-interview I get nothing but a slick brochure talking about how TH is such a great deal if you have what it takes.

Obviously, I have received no franchise disclosures and I'm pretty excited because this really sounds perfect. I have the initial interview with two nice guys who tell me more about TH and then comes the moment of truth...an hour and a half interview with the company chairman, "Mr. Buerger," to see if I can persuade him **to let me become a distributor**...absolutely a beautiful set-up.

Phew...I find out early next week that I made the cut and am being offered the opportunity.

Here's the beauty of it: How many of you in a "job interview" that you've paid the better part of \$1K to attend, are going to ask the "Chairman" :

- How many times have you been sued?
- What's the failure rate?
- Please give me names of everyone who has failed nationally?
- How many times has my market gone dark? Who were they?
- Gee, the plant tour where you showed me how cheaply and efficiently you can mass-produce Travelhost was impressive. I take it based on your unambiguous promise in the AP agreement about getting wholesale pricing, that you aren't going to charge 2.5- 3 times wholesale for printing?
- What is the real success rate in selling these 2 pages of free national ads?
- How many APs in the last 5 years have collected the supposed 40% commission for placing national ads?

My guess is that some smarter people than I asked those questions and were summarily booted out the door, minus the "opportunity" and minus \$1K

My point is, this is the essence of deceit, all of it in my opinion. If it's a franchise, it is unlawful deceit.
Posted by Jeff Loudon at 9:57 AM 0 comments [Links to this post](#) 

Required Franchise Disclosure: Item 3- Present and Past Litigation

Wouldn't it be nice to know about past and present legal actions against Travelhost? How about the names of the parties and the settlement terms? How about going back 10 years?

Guess what? It's required if Travelhost is deemed to be a franchise in your State, and actually Federally if the FTC would get off its rear and enforce the laws on its books.

Below is the rule on litigation disclosure for those of you who want details. **Below that is an article that I'd of liked to have known about before yesterday, a newspaper article published a year before I**

bought a Travelhost Franchise (April 2005).

Item 3- Uniform Franchise Offering Circular--Applies in 15 States plus Federally:

LITIGATION

DISCLOSE WHETHER THE FRANCHISOR.....:

A. HAS A.....MATERIAL CIVIL ACTION PENDINGALLEGING A VIOLATION OF A FRANCHISE,FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IN ADDITION, INCLUDE ACTIONS OTHER THAN ORDINARY ROUTINE LITIGATION INCIDENTAL TO THE BUSINESS WHICH ARE SIGNIFICANT IN THE CONTEXT OF THE NUMBER OF FRANCHISEES AND THE SIZE, NATURE OR FINANCIAL CONDITION OF THE FRANCHISE SYSTEM OR ITS BUSINESS OPERATIONS. **IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM, NATURE, AND CURRENT STATUS OF THE PENDING ACTION.**

B. HAS DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR BEEN HELD LIABLE IN A CIVIL ACTION BY FINAL JUDGMENT **OR BEEN THE SUBJECT OF A MATERIAL ACTION INVOLVING VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM AND DATE OF CONVICTION OR DATE JUDGMENT WAS ENTERED, PENALTY OR DAMAGES ASSESSED AND/OR TERMS OF SETTLEMENTS.**

"Call it Travel Wars; Suit Erupts over New Magazine"

Baltimore Business Journal, April 2005

"A local travel magazine publisher is embroiled in a legal dispute with a national travel publication in which both sides accuse the other of misrepresenting their end of a franchise agreement.

At least three separate lawsuits have been filed in the matter.

Dallas-based **Travelhost Inc.** filed a lawsuit against John E. Barton and his Maryland company **J. Barton Associates Inc.**, alleging he breached the noncompete clause in his local franchise agreement by distributing a competing publication, Baltimore Ambassador. The case, filed in

Dallas County District Court, is set to go to trial in May, following a judge's temporary injunction order, issued in January, that the defendant stop publishing and distributing Baltimore Ambassador.

Meanwhile, Baltimore Ambassador magazine continues to be published and solicit advertising in violation of the franchise agreement, said Travelhost attorney John A. Price.

Travelhost seeks unspecified damages, including attorneys' fees and court costs.

In 2000, Travelhost Inc. hired Barton to distribute and sell advertising for Travelhost's Maryland edition, which includes Baltimore and 18 counties, court documents show.

Barton filed his own lawsuit in Anne Arundel County Circuit Court last fall, alleging Travelhost Inc. violated Maryland franchise law because it failed to register the franchise in Maryland. The suit also claims that Travelhost sent a letter in December 2003 rescinding the franchise agreement.

Barton, along with other former associate publishers from nine other states, filed a separate lawsuit in Dallas County District Court earlier this year against Travelhost, alleging the publisher mislead local franchises, court documents show.

Travelhost induced associate publishers to "give up a large portion of their resources without the promised support from Travelhost," said Michael K. Hurst, an attorney with Texas law firm Godwin Gruber LLP, which represents the franchisees.

"Travelhost – the self-proclaimed travel publishing empire – runs its business by inducing associate publishers to enter into contracts based on blatant misrepresentations and omissions of material facts," the lawsuit reads.

"Travelhost thrives on its tremendous turnover by fraudulently inducing the next round of unassuming associate publishers to enter into the same contracts frequently reselling spoiled markets to new associate publishers who have no chance of success because of the tremendously bad reputation that attaches to the name Travelhost," court documents say.

According to court documents, associate publishers paid \$40,000 with the promise of earning more than \$100,000 a year for printing and distributing a local travel magazine. "Instead of earning in excess of \$100,000 they ended up paying in excess of \$100,000 just to keep their Travelhost publication afloat."

In two and a half years of publishing, Barton lost more than \$250,000 publishing Travelhost in Baltimore and Annapolis, the lawsuit alleges. The franchises seek unspecified damages, including court costs and attorneys' fees. The case is set to go to trial May 2.

John Barton could not be reached for comment.

Travelhost Chairman James E. Buerger could not be reached for comment."

<http://baltimore.bizjournals.com/baltimore/stories/2005/04/11/story5.html?surround=etf>

My friend Marty contributed this article to the blog...Thank you much. (Marty was law school classmate and is a former judge.)

Travelhost is an excellent ad venue to reach travelers...the best. Jeffloudonth@aol.com

Saturday, May 2, 2009

Is Travelhost a Franchise? So What?

(The usual caveat--I'm not licensed to practice law in any State. ..Note, I could be in Washington if I attend 2 weeks of continuing legal education.)

Fourteen States and the Federal Government have Franchise Investment Protection Acts. The acts are designed to mandate certain disclosures to people considering an investment in business opportunities.

The States are California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, Washington, Wisconsin.

The key is that these Acts place uniform disclosure requirements on Franchisers before the investment is made. They also have severe punishments to Franchisors who fail to make the required disclosures. Before we get into this, let's define a franchise.

The typical language in the Washington Act is as follows (I deleted irrelevant portions):

(4) "Franchise" means:

(a) An agreement.... by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services *under a marketing plan prescribed or suggested in substantial part by the grantor...;*

(ii) *The operation of the business is substantially associated with a trademark, service mark, trade name, owned by, or licensed by the grantor ...; and*

(iii) The person pays,....., a franchise fee.

(5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:.....

.....

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

(e) Training regarding the promotion, operation, or management of the business;

(12) "Franchise fee" means any fee or charge that a franchisee is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement,

including,any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor,; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price;

The first two elements of the definition are met. Travelhost contracts with APs state that it shall not help with marketing, but, initial training and webinars meet the threshold anywhere.

The part that is tricky is the Franchise fee. A fee will be deemed to have been paid if the the initial \$30,000 paid for the AP agreement is marketed as essential to the overall distributorship...a question of fact. Secondly, if the price we pay for mandatory TH printing and publishing is deemed to be higher than "bonafide wholesale." I think this test is easily met, but that is still a question of fact that would involve expert witnesses to prove. (Easily, I think)

If the investment is a franchise, TH must fill out a booklet of disclosures. The booklet really isn't that big a deal *unless TH has something big to hide, like the names of people who have failed in the last 3 years or the number of APs presently operation in the nation.*

Item 20 of the uniform disclosures is as follows:

Item 20

LIST OF OUTLETS

THE NAMES OF ALL FRANCHISEES AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL OF THEIR OUTLETS. THE FRANCHISOR MAY LIMIT ITS DISCLOSURE TO ALL FRANCHISEE OUTLETS IN THE STATE, BUT IF THESE FRANCHISEE OUTLETS TOTAL FEWER THAN 100, DISCLOSE FRANCHISEE OUTLETS FROM ALL CONTIGUOUS STATES AND THEN THE NEXT CLOSEST STATE(S) UNTIL AT LEAST 100 FRANCHISEE OUTLETS ARE LISTED.

A. THE NUMBER OF FRANCHISEE OUTLETS IN THE FOLLOWING CATEGORIES THAT, FOR THE 3-YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF FRANCHISOR'S MOST RECENT FISCAL YEAR HAVE:

- (1) TRANSFERRED CONTROLLING OWNERSHIP;
- (2) BEEN CANCELLED OR TERMINATED BY THE FRANCHISOR;
- (3) NOT BEEN RENEWED BY THE FRANCHISOR;
- (4) BEEN REACQUIRED BY THE FRANCHISOR; OR
- (5) BEEN REASONABLY KNOWN BY THE FRANCHISOR TO HAVE OTHERWISE CEASED TO DO BUSINESS IN THE SYSTEM.

B. THE NAME AND LAST KNOWN HOME ADDRESS AND TELEPHONE NUMBER OF EVERY FRANCHISEE WHO HAS HAD AN OUTLET TERMINATED, CANCELLED, NOT RENEWED, OR OTHERWISE VOLUNTARILY OR INVOLUNTARILY CEASED TO DO BUSINESS UNDER THE FRANCHISE

AGREEMENT DURING THE MOST RECENT LY COMPLETED FISCAL YEAR OR WHO HAS NOT COMMUNICATED WITH THE FRANCHISOR WITHIN 10 WEEKS OF THE APPLICATION DATE.

There are some other very important rules that must be complied with that I'll discuss in the next post

Posted by Jeff Loudon at 4:29 PM 0 comments [Links to this post](#) 

Friday, May 1, 2009

11 Tips to Assess Whether You Should Become a TH Associate Publisher

I launched my edition of Travelhost of Rochester & the Finger Lakes in June of 2006. In the training class, there were about a dozen of us launching 8 separate editions of TH across the U.S.

Now, only 1 out of 8 is still publishing. I'm 1 of the 7 who is not. I invested my life savings, took a leap of faith and I did not reap the benefits I believed I would. The net did not appear.

The first thing I want to share is that I LOVED being a Travelhost Associate Publisher. I felt I was making a difference and doing something important. I made friends and met people I'd probably never have known otherwise. It was a great learning experience.

And my edition was successful...in every way but financially. My hotels loved the magazine, my advertisers loved it and the readers I heard from adored it.

I learned these 11 lessons from publishing TH and I'd like to share them.

1) Be sure you know what business you are going into. If you decide to buy a TH edition, be sure you go into it with both sales skills and publishing skills at the outset.

After the edition closed, a friend asked, "Carol, what business did you *think* you were in?"

"I thought I was publishing a travel magazine," I responded.

"Did you have subscribers?" He asked.

"No. Hotels, inns and B&Bs and travel stops got copies of the magazine for free."

"So your only revenue came from advertising. Then what business were you really in?" He asked.

"Ad sales," I responded glumly.

I was an experienced publisher and editor, but I had no ad sales background when I started. I quickly realized that if I were going to succeed, I needed to learn quickly. I studied sales by reading, attending classes and taking training. I invested in my education and *really worked* at it. Former advertisers have said I was one of the best ad salespeople they knew.

2) Search the web for information about TH's reputation and information about the strength of their brand.

After becoming a TH Associate Publisher, I attended the NYS Governor's tourism conference with 300 tourism professionals. I was surprised how many had never heard of the magazine and those that knew of it said, "Oh, that magazine with the high turnover in publishers."

3) Understand what business TH is in. They are in the printing business. Their model is a way to keep their printing presses full and garner revenue. Get quotes on what you would pay for retail printing locally and compare it against the company's quoted prices for printing. Had I done this, I'd have found that I was paying *more than double* what local printers would charge. Do the same for *shipping and distribution* costs. I found substantial discrepancies between the estimates provided by TH and reality.

4) If you do decide to "go for it," get it in writing that your content and intellectual property *cannot* be used online by TH if your market closes.

5) Questions to ask:

- Associate Publisher success rates. Listen and get *facts*.
- How many failed publishers were in your market before you? When? Ask for their name and contact information. If TH won't give it to you, *think carefully*.
- Talk to the person who owned the market before. What is the *real* reason s/he gave it up?
- Find out how many editions are *actually* being published in your state. If you find an edition online but there is no name in the welcome letter or the masthead, chances are, it has gone dark.

6) Do not anticipate that you will be able to sell regional or national advertising.

7) Carefully assess your market. Check pricing on advertising in competitive and other print publications; Assess the current economic conditions of your region; Find out whether other magazines have gone out of business recently.

8) If you can't launch your magazine, do not expect to get your money back.

9) Anticipate that success is a long-term investment. Are there successful associate publishers? Absolutely! Some are wildly successful. Most started a long time ago or purchased previously successful editions.

10) Be sure to look at the TH website. Is it using current technology? Will it serve the needs of your customers? If you're not sure, ask a local marketing expert for their opinion of the site.

11) Remember that starting a business is very hard work. You are running the company, selling the ads and doing all the work. I worked 75 to 80 hours *every week*, and there just wasn't enough of me to go around.

Do your homework and hopefully you will find the right opportunity. Keep an open mind but *be cautious* and remember, this is *business*, not personal.

I am still grieving the loss of a dream. Many smart, savvy, dedicated entrepreneurial Associate Publishers *I know personally* have lost tens, even hundreds of thousands of dollars, their homes and their financial security. Like me, they all expected to succeed. A failed edition can seriously affect your personal life, your credit, your health and your peace of mind. If you come to the end of your money, *do not go into debt* for this venture, *no matter what kind of offer is made*. Cut your losses and move on.

Be sure to think about what you'll do if you don't succeed. Understand the financial obligation you are making and be clear about your expectations and what you'll do if expectations are not met.

Go into it with your eyes open.

Posted by Carol White Llewellyn at 2:51 PM 2 comments [Links to this post](#) 

"135 Associate Publishers" and Growing:.....Fraud?...Breach of Contract?

Perhaps a smart lawyer might mirror my thoughts, perhaps not. I do not claim to be a licensed lawyer...some drivel from a "layman."

It dawned on me this morning in the shower that the claim of 135 APs perennially by Travelhost in its sales pitches, sales materials, Careerbuilder.com and website has considerably more import than just to highlight just how bad the success rate for franchisees has been.(Note: I made copies of Careerbuilder and the website in case TH "ceases and desists" this misrepresentation in the dark of night)

The size and growth rate of the network strikes right at the heart of being induced to be a franchise by TH and in the nature of what is being bought for "AP status." Travelhost induced me to become an AP because it touted itself as a growing 135 region, national publication. My guess is that the same representation has been made to everyone subsequently, to this date, and perhaps before mid-2006.

Based on my guess in reviewing the TH website, there are now only 88 markets running. So in the first instance, recent APs have arguably been induced to the Travelhost umbrella by a misrepresentation of the size of the network. This might be characterized as a "misrepresentation" or "fraud." Either of these things, if proven, give rise to significant remedies to APs. Furthermore, the "pot's right" (waiver agreement in Travelhost parlance) that TH mandates most APs sign on departure to avoid even more grief might not apply if fraud is proven. (Note, watch out you get a bill for an additional printing if you don't notify TH 90 days in advance)

It gets a bit more interesting when you analyze the benefits conferred under the AP agreement: Having been told that TH is "national" and in 135 markets...and growing you fork over \$30,000 for 2 free pages of National ads to sell and pocket the proceeds, supposedly \$72,000 worth. You

are promised a 40% commission on the revenues of national ads the AP sells thereafter as well, something that has been accomplished extremely rarely. (You also get "wholesale pricing" which as previously posted, is untrue in my opinion)

Once you happily go out in the street as a new AP and try to sell the national ads, you find out that TH hides the data on existing market quantities and components...ie how many and where. It also has hidden the fact that there are far fewer than 135 markets operational, for which the AP is trying to pocket \$36,000 on an ad sale. The net result is that virtually nobody successfully sells the free 2 pages of Natl. ads or other national or regional ads.

(A strange aside to this: If an AP did successfully sell these ads through a claim of 135 markets nationally, the AP could be sued for misrepresenting 135 markets to the advertiser...yikes!)

Bottom Line: The AP pays \$30,000 extra for the right to sell national and regional ads for a 40% commission to "135 markets."...not. The AP gets 2 free ad pages (worth \$72,000) published in 135 markets...not. The AP gets "wholesale pricing" for the \$30K...not. (The AP gets Exhibit XXX pricing that is the same as non-APs' pricing... appx.triple retail

What's left for your \$30K: The marvelous website (subject to massive fees) A free regional ad based on circulation, that rarely garners any revenue.

You've heard enough layman talk...talk to a lawyer if this stuff is interesting, before or after you invest. Stay tuned, we get into the "Franchise Laws--a Layman's Perspective" and were are going to have some nice posts from former APs forthwith!

Have a great weekend!

Posted by Jeff Loudon at [12:58 PM](#) 0 comments [Links to this post](#) 

Tuesday, April 28, 2009

The National Account Marketing Plan

I keep hearing the supposed difficulties of implementing the national chain marketing plan I feel like I'm in the twilight zone.

At present Travelhost has virtually 0 penetration guiding travelers to local versions of national chain restaurants, such as Olive Garden. **I'm not talking about a national ad or regional ad, I speaking of a relatively small local section directional ad that says "Hey, your favorite chain restaurant is nearby and here is how to get there."**

We can't presently do this because chains don't allow local marketing decisions for the most part. Secondly, chains don't want to deal with 100 APs that can't solve their issue on any meaningful scale. (Do you think a VP marketing of Darden (Olive Garden) will sit down with an AP to talk about a \$200/month local ad?) Instead, each AP "that wants to" signs up with a single common representative to call on 1 or more chains on their behalf for their own local area. A single professional pitch for many or all APs, with data and price points is presented in a concise, compelling manner.

This does not involve any selling "into another APs market," nor "alteration of TH/AP agreements.

What's so difficult about this? Travelhost continues to implicitly claim that it will cause problems in that it will claim a 20% cut when it isn't entitled to the cut contractually.. [sound familiar?]. APs each hire a common rep to sell into their own market...nobody else's. A local market sale by a rep hired by the local Ap.

A single rep on behalf of a major part of the network makes a single call on a relevant targeted chain account...not a hoard of APs with different price points and different pitches, all saying they represent "Travelhost." Remember, once one AP screws up a pitch, the target is poisoned for 1-2 years?

Secondly the marketing plan involves common representation at relevant trade shows. For example, an AP was invited to set up a booth at the Pizza Hut franchise tradeshow. He volunteered to attend and get leads for the network for 3 days. Cost \$5 K. TH told him he would have to pay this.

We need "marketing" of Travelhost as a brand and lead generation at restaurant tradeshows either by a Travelhost person dedicated to this effort, or an outsider representing the participating APs.

I delivered extensive documentation to the Advisory Bd 1.3 years ago. Everyone loved it and Mr. Buerger told Scott Brooks (head of marketing before Portener, to go forward). After months of frustration, Scott frustratedly told me that it wouldn't happen, I was being tricked. Then he quit.

I have extensive documentation on the plan and the rationale for its necessity. After Scott Brooks departed, I polled the network. 36 of 37 responding APs thought it was wonderful and would "volunteer to participate.

What's to lose, we have no penetration of the chain restaurants (stores) at this time...90% of the market?

As Scott said, it will never happen...not because it is legally or difficult logically, but because "somebody won't let it happen."

Posted by Jeff Loudon at [2:48 PM](#) 0 comments [Links to this post](#) 

Monday, April 27, 2009

The Price Term of the AP Contract

There continues to be confusion about whether I, along with hundreds of other people signed a lousy contract with Travelhost and then belatedly griped because through our own fault, things didn't work out.

The truth is that in many cases APs own missteps may have led to their demise, but those missteps did not include signing a lousy contract in the price term. The only continuing misstep of the AP network and myself will be to let Travelhost continue to price 2.5 times wholesale

when the contract, inconsideration of an "extra" \$30,000 gives the APs wholesale pricing....Travelhost wrote a contract that is not to the owner's liking so he is choosing to ignore it.

From my December 2008 post that was erased by TH:

Pricing for the printing is specifically referenced in my two contracts with Travelhost, Inc.:

Paragraph 1.1 of the Distributorship Agreement states:

"Distributor agrees to purchase from Publisher and to accept delivery of not less than _____ copies of each quarter of the Publication in accordance with the rate schedule attached hereto as Exhibit "AAA."

Paragraph 6 of the Associate Publisher Agreement, an option I chose for an extra \$30,000, modifies this price term to my benefit (?). It states:

"Publication Discount: In addition to the advertising rights referenced hereinabove... AP also shall be entitled at all times to wholesale pricing for the publication, notwithstanding the provisions of Exhibit "AAA" to the Distributorship Agreement."

We do not need to pay 2.5 times "retail" for Travelhost printing. Our contract specifically promises otherwise. Eli, Ina and Cathy, feel free to pay anything you want, I don't feel so generous to Travelhost at this point in time.

Posted by Jeff Loudon at [6:22 PM](#) 0 comments [Links to this post](#)

"The Living Dead" Travelhost's Secret to Market Share

Travelhost still proudly boasts that it is in 135 USA markets. Check out its website and all of the intros to cities. Well, I hate to be picky, but this isn't quite correct. OK, let's not mince words...**it's outright false**. Travelhost is presently alive and well in 88 markets.

To be fair to Travelhost, the website does depict 150 destinations. The only problem is that 62 of the destinations are what I characterize as "the living dead." These are issues that no longer publish and are no longer in hotel rooms. On average, they died 1 year ago. Travelhost simply appropriated the online version of these mis-fortunate APs that have failed in the last year on average. (my estimate).

You can easily see the "living dead." The names are omitted from the masthead and the welcome page. The issue date is usually entirely removed as are any dates on ads and content. We spent several hours over the weekend tallying every destination in the nation on Travelhost.com.

A casual visitor will find 258 destinations. About 1/3 of the time, a click to a destination will lead to an alive and current edition, 24% of the time, the reader (or prospective new AP) will be tricked by reading a "living dead" issue and 43% of the time no destination will be found.

Two things really disturb me about this:

First: I find that I've been lying when attempting to sell regional or national ads. In my region, I've been touting markets like Boise, Spokane, Santa Fe and Boulder, among many others, as being alive. The truth is, that in the entire Western US, region, exclusive of California, there are only 11 living markets, including mine.

Secondly: The mortality rate of APs is staggering. As previously mentioned, there are 62 "living dead" Travelhost issues on the Travelhost website. The website was started 2 years ago, so none of these roadkills are more than 2 years ago. My guess based on a careful review is that more than **45 APs lost their investment and "failed" in the last year...more than 50% of the remaining "network."** This also confirms my failure rate over the past 3 years that is substantially greater than the new APs brought into the network.

Following cities are now defunct:
Albany/Saratoga
Albuquerque
Atlanta
Augusta
Big Sky Country
Birmingham
Black Hills
Boise
Boulder Co.
Buffalo/Niagra
Central Northern Oregon Coast
Central/South Jersey
Chicago-Far West suburbs
Columbus Ga
Council Bluffs-Midland Dallas ,
Scranton
DC Metro (Washington DC that is)
East Alabama Flint and the Thumb
Greater Boston
Greater Columbus OH
Greater Delaware
Greater Madison /South Wis.
Greater Montgomery Ala
Greater St Louis
Greenville-Upstate SC
Long Beach Cal
Long Island NY
Los Angeles

Miami Beaches
NE-NW Georgia (4th person in TIPS marketing training with me--3 others deceased)
Napa Valley
Norfolk-Porsmouth
NE New Jersey
Northern Arizona
North Michigan
NW Arkansas
Panama City-Beaches
Philadelphia
Piedmont Triad
Pueblo/Canon City
Rochester/Finger Lakes
S. Indiana-Western Kentucky
San Diego North
San Francisco-San Jose
Scranton
South Jersey Shore
South Orange County
SE Kentucky
SE Minnesota
SW Michigan
SW Virginia
Space Coast
Spokane
The Berkshires
Tupelo-NE Mass
Twin Cities
Virginia Beach
West Michigan
Williamsburg
Wisconsin Dells

I don't guarantee absolute accuracy here. Since Travelhost keeps the failure rate a closely guarded secret (for obvious reasons), I looked at all issues on the Travelhost Website with no-current dates to get this list. My belief is that it is very accurate.

Posted by Jeff Loudon at [7:50 AM](#) [0 comments](#) [Links to this post](#)  

Saturday, April 25, 2009

My perception of Travelhost Magazine as an investment opportunity:

The Travelhost lifestyle and concept

The overall concept of Travelhost is sheer genius conceived by James Buerger, in Dallas 41 years ago. The magazine is placed inside hotel rooms and read over and over again by guests

with immediate needs for dining, shopping and entertainment so there is a great demographic at work. People who buy territories in the U.S. become "Associate Publishers" (APs), that have a lot of autonomy and latitude in writing their editions (quarterly usually) and marketing to potential advertisers, and setting price-points.

It is fun and there is a great deal of freedom for APs. It really does strike at the heart of American entrepreneurialism. We deal with wineries, restaurants and stores in our region mainly. (you can see my region by going to www.Travelhost.com and entering Washington Wine Country as the edition. During this past week we visited some towns, tasted potential customers' wines, dined at actual customer restaurants and generally had a great time selling ads and taking photos for editorial. Overall, so long as you are making money, I can't think of a better avocation....It sure beats practicing law or running \$25, million worth of gas stations (in my prior lives)

What you supposedly buy from Travelhost as a new AP, for \$60,000?

1. The right to exclusively publish Travelhost in a geographic area
2. The "growing" Travelhost brand with 100 editions throughout the nation
3. Technical and design support in publishing each issue
4. The right to sell regional and national ads anywhere in the USA
5. Two free pages of national ads (all editions in the nation) that can be sold for in excess of \$35,000 each (without having to pay the usual 60% cut to Travelhost)
6. A regional ad saleable for \$1400/month, so long as you publish 10,000 copies per quarter
7. "Wholesale publishing pricing"
8. Partnership with a forward-thinking, leading-edge Company with 41 years in business
9. A fantastic new website
10. Many other items of so-called value added to help you succeed
11. A proven template with a track record of success and growth

What do you really get?

With the exception of items 2, 7, 8, 9 and 11, you do receive the listed items. However, I perceive that there are significant qualifications that greatly limit the value of what you are buying, even if delivered as portrayed. I'll go down the list.

1. As promised, an exclusive region
2. Travelhost keeps its growth rate as a closely guarded secret. Three years ago it had 135 APs. Now it has about 100. This is after adding a reputed 35 per year.
3. You do get design support that I have found very helpful. Unfortunately there are design limitations as well and a penchant by ownership for stagnant and arguably dated design features. AP input to change the design to make it more current is ignored.
4. While you do have the right to sell regional and national ads in the USA there are flaws in the Travelhost business model that makes it nearly impossible to succeed. Basically the problem is that all APs throughout the nation can call on the same national account...100 APs, that is, so the target company will not talk to any of us. Travelhost has steadfastly opposed removal of the obvious roadblocks to success in this regard. The proof is in the pudding: Ask Travelhost how many National and regional ads have been sold at stated ad rates in the entire US in the last 3 years. I believe 0 national ads and a small handful of regional ads. (I sold my regional ad,

supposedly worth \$1400/month for about \$60/month)

5. As stated in number 4, nobody can sell national ads, even the free ones Travelhost gives you at the outset. I ended up clearing \$700 for my “\$72,000 worth” of free national ads and I did better than average. Again, I don’t believe any ads have been sold for significant money in the past 3 years...ask Travelhost.

6. Travelhost provides an ad as part of the package, supposedly worth \$1400/month. We are getting about \$60/month for it...better than most APs.

7. It costs about \$1800 for the paper to print 10,000 copies of Travelhost. Travelhost charges nearly \$16,000 for the “publishing.” Printing can be had, at retail for about \$6,000, so Travelhost charges about \$10,000 extra for so-called “publishing and value added.” This charge is mandatory and is incurred each quarter. Admittedly, the graphic design, the cover photo and some of the other value added things are worth something, but \$10K? Is this “wholesale?” I strongly think not!

8. Travelhost is run with an iron fist by a very bright man...a man that is unfortunately not bright enough to allow his customers/employees meaningful input on anything. Don’t be confused by the initial charming interview in Dallas. Once you pay your \$60,000 to become an AP you will not become a valued customer, you’ll become of less stature than an employee, with the only benefit being that you’ll rarely cross paths with the boss...”Mr. Buerger,” (his mandatory name) unless you seek to affect needed change or to be treated like a customer. That is, unless you meet the fate of the vast majority of APs, going broke and needing help. The company simply is not forward thinking for the most part...a “time warp?”

9. The website is a disaster as it stands. Management now promises that it is still a work in progress. (after 1.6 years) However, even if it does become a go, Travelhost is planning on charging exorbitant amounts for content APs provide. Apparently Travelhost will own that content and control it.

10. The only value-added you get from Travelhost is that you rarely hear from them. They have fired most of the contact and “help” people in the past 3 months. The graphic art work is good and is about the only value added. Is it worth the \$10K charge...per quarter, I think not. (Try \$1500)

11. The track record is dismal. Start with 135 APs in 2006, add about 100 new APs over 3 years (estimate based on Travelhost representation to me) and end up at 100 now. What’s the success-rate? There is one “success” here. Travelhost collected \$6 million of upfront fees plus huge “publication” over-charges from people over this time..It was successful!

Posted by Jeff Loudon at 6:55 PM 9 comments [Links to this post](#) 

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